

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 24262-5-III

Respondent,

Division Three

v.

GERALD ALLEN DAUENHAUER,

UNPUBLISHED OPINION

Appellant.

SWEENEY, C.J.—A challenge to the sufficiency of the evidence admits the truth of the State’s evidence together with any reasonable inferences from that evidence. Gerald Dauenhauer passed counterfeit checks in two stores using phony identification. In one case, the store scanned the phony identification and store surveillance cameras captured Mr. Dauenhauer on film. In the second (the count that is the subject of this appeal), no surveillance photos were taken. And the clerk could not identify Mr. Dauenhauer as the person who passed the counterfeit check. We hold, nonetheless, that the circumstantial evidence is sufficient to support the conviction for identity theft in the second degree.

FACTS

A Yakima police officer stopped Gerald Allen Dauenhauer's car. The officer arrested him and searched his car incident to arrest. The officer found two driver's licenses—a counterfeit license and Mr. Dauenhauer's license. The counterfeit license had Mr. Dauenhauer's picture on it. But the name and identification number belonged to David Matthew Jorgensen. Mr. Jorgensen did not give Mr. Dauenhauer permission to use his driver's license. The officer also found a counterfeit check from United Builders of Washington. The check was made out to David M. Jorgensen.

Two additional United Builders checks, made out to Mr. Jorgensen, were cashed in Richland. The first check was cashed at Albertson's and the second was cashed at Winco Foods.

Norma Vinson worked for Albertson's. She wrote down the driver's license number of the person who cashed the check—Mr. Jorgensen's number. Ms. Vinson could not recall the person who actually cashed the check. She recognized Mr. Dauenhauer only as "a person who's been in the store." Report of Proceedings (Feb. 22, 2005) (RP) at 105.

Winco Foods has a policy of scanning a person's driver's license when a request is made to cash a payroll check. Winco Foods scanned the driver's license with Mr. Dauenhauer's photo but Mr. Jorgensen's name to cash a payroll check. Winco Foods'

camera surveillance system also recorded Mr. Dauenhauer inside the store.

The United Builders payroll checks (made out to Mr. Jorgensen) were not valid checks. United Builders did not employ Mr. Jorgensen. And Mr. Jorgensen had never done business with the company. Nor had United Builders employed Mr. Dauenhauer.

Pat Strosahl works for United Builders. He confirmed that the payroll checks were not valid checks. The checks were not in the same format as the company's true payroll checks. And the logo and the address were in the wrong place.

The State charged Mr. Dauenhauer with two counts of identity theft in the second degree. A jury convicted him on both counts.

DISCUSSION

Mr. Dauenhauer appeals his conviction in count 1 (check cashed at Albertson's). He argues that the evidence is not sufficient to support the jury's finding of guilt for count 1. He points to the clerk's failure to identify him as the person who passed the check.

We review a challenge to the sufficiency of the evidence in a light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The challenge represents an admission of the truth of the State's evidence and all reasonable inferences. *Id.* Circumstantial evidence is as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

We defer to the trier of fact since it is in the best position to pass on conflicting evidence, witness credibility, and the weight to be assigned to the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). We will affirm if the trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Salinas*, 119 Wn.2d at 201.

A person is guilty of identity theft in the second degree if he (either as an “accused or an accomplice”) “uses [a] victim’s means of identification . . . and obtains an aggregate total of credit, money, goods, services, or anything else of value that is less than one thousand five hundred dollars in value.” Former RCW 9.35.020(2)(b) (2001) (emphasis added). A “means of identification” includes a driver’s license. RCW 9.35.005(3).

Mr. Dauenhauer argues there is no evidence to show that he is the person who used Mr. Jorgensen’s identity to cash a check at Albertson’s. The State responds that Mr. Dauenhauer used Mr. Jorgensen’s identity in other stores and he was caught on surveillance video in Winco Foods, and therefore the reasonable inference (one drawn by the jury) is that he passed the Jorgensen check in Albertson’s, using Mr. Jorgensen’s identity.

Mr. Dauenhauer had both a counterfeit driver’s license and a counterfeit check. The counterfeit license had Mr. Dauenhauer’s picture, but bore the name David M. Jorgensen. The counterfeit check came from United Builders of Washington. It was

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payable to David M. Jorgensen. Mr. Dauenhauer cashed the check at Winco Foods. He used the counterfeit driver's license to cash the check. Another similar United Builders check (written out to Mr. Jorgensen) was cashed at Albertson's. Ms. Vinson, the Albertson's employee, recognized Mr. Dauenhauer as "a person who's been in the store." RP at 105. This is an adequate circumstantial case against Mr. Dauenhauer considering the deference given to the State's version of the facts following conviction. *State v. Cross*, 156 Wn.2d 580, 627, 132 P.3d 80 (2006).

We affirm the conviction.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Sweeney, C.J.

WE CONCUR:

Schultheis, J.

Kato, J.

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